

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

DIGITAL MEDIA SOLUTIONS, LLC,)	CASE NO. 1:19-cv-145
)	
Plaintiff,)	JUDGE DAN AARON POLSTER
)	
v.)	MAGISTRATE JUDGE
)	THOMAS M. PARKER
SOUTH UNIVERSITY OF OHIO, LLC)	
<i>et al.</i> ,)	
)	
Defendants.)	

**RECEIVER’S MOTION FOR LEAVE TO PLEAD
IN RESPONSE TO INTERVENOR’S COMPLAINT FILED BY
MANAGEMENT SERVICES GROUP, INC. [DOC. 387]**

On July 3, 2019, intervenor Management Services Group, Inc. dba Marketing Support Network (“MSN”) filed its Complaint in Intervention against Dream Center Education Holdings, LLC (“DCEH”), one of the Receivership Entities. For the reasons set forth herein, the Receiver moves this Court for an Order granting him leave to file a responsive pleading to MSN’s Complaint until the earliest of: (1) the Receiver’s receipt of sufficient funds to begin making distributions to creditors; (2) the Court ordering the Receiver to administer a proof of claim process; or, (3) the termination of this Receivership.

MSN’s Complaint alleges that it provided, but was not paid for, services to DCEH through December 31, 2018.¹ *See* MSN Compl. ¶ 12 [Doc. 387]. MSN does ***not*** allege that

¹ The Receiver notes that MSN followed this Court’s instruction and sought leave to file the Complaint at issue, which motion was granted by this Court. The motion was filed on June 27 [Doc. 381], and was granted on July 2, before the response time allowed by Local Rule 7.1(e) elapsed. Had a response to MSN’s motion been filed, it would have raised the same issues identified within the instant pleading.

it provided any services to DCEH or any other Receivership Entity during the course of the Receivership for which it did not receive compensation. Its claim is therefore based solely on pre-Receivership conduct.

The cash-strapped nature of this Receivership is no secret. The Receiver should not be forced to investigate and possibly litigate with MSN (or any other creditor) over the amount of its claim, when the Receiver may never have sufficient funds to pay any of the unsecured creditors, like MSN. Stated simply, and at this time, it is not in the best interest of the Receivership for the Receiver to engage in litigation with creditors over the amount of their claims.

MSN will not be harmed if the Court grants this motion. It is not as though there is a race to lay claim to a pool of funds available to the pre-Receivership creditors. There are presently no funds to pay *any* pre-receivership creditors, so any delay in MSN recovering a judgment is of no effect. Seemingly recognizing the presently futile nature of seeking a worthless judgment, we note that none of the other unsecured and secured creditors who have intervened in this case have sought leave to file complaints. MSN is no different than any other unsecured pre-receivership creditor.

For these reasons, the Receiver requests that the Court grant this Motion and issue an Order granting him leave to file a responsive pleading to MSN's Complaint until the earliest of: (1) the Receiver's receipt of sufficient funds to begin making distributions to creditors; (2) the Court ordering the Receiver to administer a proof of claim process; or, (3) the termination of this Receivership.

Dated: July 22, 2019

Respectfully submitted,

/s/ Nicholas R. Oleski
Robert T. Glickman (0059579)
Charles A. Nemer (0009261)

Robert R. Kracht (0025574)
Hugh D. Berkson (0063997)
Nicholas R. Oleski (0095808)
MCCARTHY, LEBIT, CRYSTAL
& LIFFMAN CO., LPA
101 West Prospect Avenue
1800 Midland Building
Cleveland, Ohio 44115
(216) 696-1422 – Telephone
(216) 696-1210 – Facsimile
rtg@mccarthylebit.com
can@mccarthylebit.com
rrk@mccarthylebit.com
hdb@mccarthylebit.com
nro@mccarthylebit.com
Special Counsel for the Receiver

CERTIFICATE OF SERVICE

The foregoing was electronically filed this 22nd day of April, 2019. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Nicholas R. Oleski

Nicholas R. Oleski (0095808)